

Medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower State rate of 1%. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

May 6, 1999

Dear Mr. Xxxxx:

This letter is in response to your undated letter received by our office on March 23, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Our company is currently gathering information on the taxability of certain product for Sales Tax purposes. We kindly ask for a letter ruling on the Illinois state tax rates for the following categories of product, or any literature that would contain the following information:

- 1) *Anti-Arthritic pump spray.*
- 2) *Arm, elbow, knee, or back elastic support wraps.*
- 3) *Leather Belts.*
- 4) *Jackets.*
- 5) *Skin care products. (Cleansers, toners, etc.)*
- 6) *Vests.*
- 7) *Thermal underwear.*
- 8) *Umbrellas.*
- 9) *'Shipping & Handling' charges stated together on invoice and,*
- 10) *'Shipping' stated separately on invoice. (Shipping by common carrier.)*

We appreciate your immediate attention to this matter. Thank you in advance for your prompt response to this request. Please forward the appropriate documentation to:

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See the enclosed copy of 86 Ill. Adm. Code 130.310. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use.

A medicine or drug is defined as any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the

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label to have medicinal qualities. A medical appliance is defined as an item that is intended, by its manufacturer, for use in directly substituting for a malfunctioning part of the body. See part (c) of Section 130.310. Medical devices that are used for diagnostic or treatment purposes do not qualify for the lower tax rate.

In general, in order to qualify as a medical appliance, the product must directly substitute for a malfunctioning part of the body. Examples of items that qualify for the reduced rate are artificial limbs, dental prostheses and orthodontic braces, heart pacemakers, crutches and orthopedic braces, and wheelchairs. The Department has also determined that splints, slings, and cervical collars generally qualify for the lower rate of tax. Regarding support wraps or braces, devices that provide support only, such as Ace bandages and athletic-type braces, generally do not qualify for the low rate of tax. Braces that provide a level of support that actually restricts mobility and impairs the function of the body part being braced may qualify. Generally, cosmetics, such as lipsticks, perfume, and skin cleansers and toners do not qualify for the reduced rate.

In general, shipping and handling or delivery charges are includable in the gross receipts subject to tax unless the buyer and seller agree upon such charges separately from the selling price of the tangible personal property which is sold. In addition, such charges must be reflective of the costs of shipping and delivery. To the extent that these charges exceed the costs of shipping, they are subject to tax. See 86 Ill. Adm. Code 130.415, enclosed. As a technical proposition, handling charges represent a retailer's cost of doing business, and are consequently always includable in gross charges subject to tax. See the enclosed copy of 86 Ill. Adm. Code 130.410. However, when such charges are stated in combination with shipping charges, they will be nontaxable to the extent the above tests are met.

The best evidence that shipping and handling or freight charges have been contracted for separately from the selling price is a separate contract for shipping and handling or freight charges. A separate listing of freight charges on an invoice, by itself, is insufficient. However, documentation that demonstrates that purchasers had the option of taking delivery of the property at the sellers' location for the agreed purchase price, or having delivery made by the seller for the agreed purchase price plus an ascertained or ascertainable delivery charge, will suffice.

Mail order delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the mail order form requires a separate charge for delivery and so long as the charges designated as transportation or delivery or shipping and handling are actually reflective of the costs of such shipping, transportation or delivery. See subsection (d) of Section 130.415. If the retailer charges a customer shipping and handling or delivery charges that exceed the retailer's cost of providing the transportation or delivery the excess amount is subject to tax.

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I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk

Enc.